

UNITED STATES DISTRICT COURT
for the
DISTRICT OF MASSACHUSETTS

EK VENTURES I, LLC; DAVID L. TAYLOR;
DAVID L. TAYLOR AND VIRGINIA L.
TAYLOR as TRUSTEES FOR THE TAYLOR
FAMILY REVOCABLE TRUST; and
FLEXTRONICS INTERNATIONAL LTD.,

Plaintiffs,

v.

JAMES R. BARTLETT and Z.B.R.
PUBLICATIONS, INC.,

Defendants.

and

JAMES R. BARTLETT,

Third Party Plaintiff

v.

GLOBALWARE SOLUTIONS, INC.,
ANTHONY RUDSTON and BRADLEY A. JAY,

Third Party Defendants.

CIVIL ACTION

No. 03 CV 12506 NMG

**MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION TO COMPEL
DEFENDANT ZBR TO RESPOND TO DISCOVERY REQUESTS**

I. Introduction

Although promising to provide responses to Plaintiffs' First Interrogatories and Requests for Production of Documents "shortly," Defendant ZBR Publications, Inc. ("ZBR") will not commit to a date certain by which it will provide those responses. ZBR's refusal to comply with

its discovery obligations is hindering Plaintiffs' preparation of their case, and cannot be allowed to continue.

II. Discovery Conference

On November 18, 2004, counsel for Plaintiffs, Douglas R. Roach wrote to counsel for Defendant ZBR, David Ryan, and requested a telephone conference at 1:00 p.m. on Monday, November 22, 2004 to discuss ZBR's failure to respond to Plaintiffs' outstanding discovery requests. A copy of Mr. Roach's letter is attached to the accompanying Affidavit of Douglas R. Roach as Exhibit A.

On November 19, 2004, ZBR's counsel, David Ryan, wrote to Douglas Roach and stated that he would not be available to discuss ZBR's discovery responses on that date, but that he would "be happy to discuss" them the following day on Tuesday, November 23, 2004. A copy of Mr. Ryan's letter is attached to the accompanying Affidavit of Douglas R. Roach as Exhibit B.

On Tuesday, November 23, at 1:00 p.m., Mr. Roach telephoned Mr. Ryan and left a message on his voicemail asking Mr. Ryan to call Mr. Roach back to discuss ZBR's discovery responses, and stating that if Mr. Ryan did not do so before the end of the day, Mr. Roach would consider it a refusal to confer and proceed with a motion to compel.

As of 8:00 p.m. on Tuesday, November 23, 2004, Mr. Roach had received no return call from Mr. Ryan. However, Mr. Ryan sent a fax to Mr. Roach on the evening of November 23, 2004, stating that he was sending responses to Plaintiffs' document requests by overnight mail, but making no mention of interrogatory answers. A copy of that letter is attached to the accompanying Affidavit of Douglas R. Roach as Exhibit C. Mr. Ryan did not return a telephone

message from Mr. Roach the morning of November 24, 2004 seeking clarification of his intentions.

III. Nature of the Case and Facts Relevant To Discovery

Plaintiffs in this action are minority shareholders in GlobalWare Solutions, Inc. ("GlobalWare"), which owned all of the stock of ZBR at the time it purchased Plaintiffs' stock in a corporation called Bindco, Inc. in 2000. As part of that transaction, Plaintiffs were given stock in GlobalWare in exchange for their Bindco stock. At the time of that transaction, Defendant Bartlett was the president and CEO of ZBR, and also its majority shareholder. After the transaction, Bartlett also became the president and CEO of Globalware.

Plaintiffs have learned that in connection with the above-mentioned transaction, Bartlett and ZBR made numerous false and misleading statements to Plaintiffs regarding ZBR's financial condition, its financial statements, and its financial obligations.

Plaintiffs have also learned that during his tenure as president and CEO of Globalware, Bartlett failed to conduct the affairs of the company in accordance with law and the corporation's bylaws, excluded the Plaintiffs from participation in the management of the company, and engaged in secret, self-dealing transactions both with an investor called Mezzanine Management Limited, and on his own, involving himself, his family members, and his associates.

IV. Interrogatories and Document Requests At Issue

Plaintiffs' First Interrogatories And Requests for Production of Documents are attached to the accompanying Affidavit of Douglas R. Roach as Exhibit D. As the Court can readily ascertain, the requests go to the heart of the issues outlined above, including as they do, schedules to the agreements documenting the transactions at issue, financial reports, audit reports, communications between Bartlett and other corporate officers, results of investigations

into Bartlett's behavior by ZBR, etc. Clearly, these items are all discoverable under Fed.R.Civ.P. 26(b)(1), as it is either directly relevant to the issues set forth above, or is reasonably calculated to lead to the discovery of admissible evidence.

According to the Case Schedule, Plaintiffs are required to produce their experts' reports by January 15, 2005. In order to prepare those reports, it is imperative that Plaintiffs' experts have access to ZBR's information and documents immediately.

V. Request for Plaintiffs' Expenses and Sanctions

Plaintiffs respectfully request an award of their expenses and fees incurred in bringing this motion as provided by Fed.R.Civ.P. 37(a)(4)(A).

Dated this 24th day of November, 2004.

Respectfully submitted on behalf of the
Plaintiffs, EK Ventures I, LLC; David L.
Taylor; David L. Taylor and Virginia L.
Taylor as Trustees for the Taylor Family
Revocable Trust; and Flextronics
International Ltd.



Jerold T. Everard, WSBA # 17142
Douglas R. Roach, WSBA # 21127

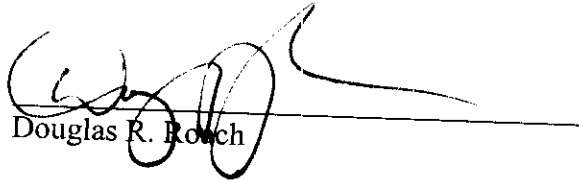
Admitted Pro Hac Vice

GROFF MURPHY TRACHTENBERG
& EVERARD

300 East Pine Street
Seattle, Washington 98122
Telephone: (206) 628-9500
Facsimile: (206) 628-9506

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served on counsel for all parties via first-class mail/electronically on November 24, 2004.


Douglas R. Roach